

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER J. EDGE

Appeal 2006-3279
Application 10/039,668
Technology Center 2600

Decided: March 20, 2007

Before HOWARD B. BLANKENSHIP, ALLEN R. MACDONALD, and
JEAN R. HOMERE, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1-74, the only claims pending in this application. We have jurisdiction under 35 U.S.C. §§ 6(b), 134(a).

Appeal 2006-3279
Application 10/039,668
Technology Center 2600

INTRODUCTION

The claims are directed to a soft proofing system, which refers to a proofing process that makes use of a display device rather than a printed hard copy. An administrator can set viewing conditions that are associated with an image, and send the image and conditions to a viewing station. Viewing of the image may be restricted at the viewing station until one or more of the conditions have been met. Claims 1 and 32 are illustrative:

1. A soft proofing system comprising:

a computer that specifies one or more viewing conditions for an image; and

a viewing station that receives the image and the viewing conditions from the computer and displays the image subject to satisfaction of the viewing conditions at the viewing station.

32. A computer readable medium storing an image file that includes image data and viewing conditions for the image file, wherein access to the image data of the image file at a viewing station is restricted by the image file when the viewing conditions have not been satisfied at the viewing station.

The Examiner relies on the following prior art references to show unpatentability:

McLaughlin	US 5,739,809	Apr. 14, 1998
Holub	US 6,750,992 B1	Jun. 15, 2004

The rejections as presented by the Examiner are as follows:

1. Claims 1, 2, 7, 8, 19, 51, 52, 55, 56, 57, 59, and 60 are rejected under 35 U.S.C. § 102(e) as being anticipated by Holub. Claims 1, 19, and 51 are independent.

2. Claims 3-6, 9-18, 20-50, 53, 54, 58, and 61-74 are rejected under 35 U.S.C § 103(a) as unpatentable over Holub and McLaughlin. Claims 11, 21, 27, 32, 38, 41, 43, 44, 45, 53, and 54 are independent.

OPINION

In reference to claim 1, the Examiner finds that Holub teaches a computer that specifies one or more view conditions for an image (Figure 3A; col. 12, ll. 10-19), and a view station (node 100) that receives the image and the viewing conditions from the computer, displaying the image subject to satisfaction of the viewing conditions at the viewing station (col. 9, ll. 16-25). (Answer 3.)

Appellant submits that Holub fails to disclose or suggest specifying viewing conditions for an image, and fails to teach display of the image subject to the viewing conditions as recited in claim 1. (Br. 9-10.)

In response to the alleged lack of “specifying viewing conditions for an image,” the Examiner shifts to column 12, lines 32-39 for the disclosure. (Answer 11.) The Examiner does not respond to Appellant’s argument that the identified section (col. 9, ll. 16-25) does not teach display of the image subject to the viewing conditions as claimed. (See Answer 11.)

Holub is directed, as the patent title indicates, to a system for distributing and controlling color reproduction at multiple sites. In Holub’s system, each network node comprises at least one rendering device. The system distributes input color image data from one to another node, and provides a data structure, called a “virtual proof,” in the network. The data

structure has components shared by the nodes and other components present only at each node. The system provides color calibration data at each node that characterizes output colors of the rendering device of the node.

Information, responsive to the color calibration data of the rendering device of the node, is produced for transforming the input color image data into output color image data at the rendering device. That information is stored in the data structure in different ones of the shared and individual components. The system also provides means for transforming at each node the input color image data into output color image data for the rendering device of the node. The rendering device of each node renders a color reproduction of the image data responsive to the output color image data, such that colors displayed at the rendering device at each node appear substantially the same throughout the network. Holub col. 9, ll. 8-34.

In the embodiment of Figure 3A, system 100 includes a network 11 having prototype nodes 102 and production nodes 104. Each node has a computer and a rendering device for producing color reproduction and a color measuring instrument (CMI) for measuring the color output of the rendering device. Holub col. 11, l. 66 - col. 12, l. 19.

At prototype nodes 102, a user may perform pre-publishing functions such as proofing and inputting digital color image data. The rendering devices at prototype node 102 may include a video screen display device 17. Holub col. 12, ll. 20-45.

The rejection of claim 1 does not identify what may be considered a “view condition” for an image in the cited portions of Holub. Since we are not told what the rejection of claim 1 considers to be a “view condition” in

Appeal 2006-3279
Application 10/039,668
Technology Center 2600

the reference, we cannot attempt to discern where the cited sections might describe display of an image subject to satisfaction of the viewing condition.

Absent a convincing explanation from the Examiner as to how claim 1 is met by the relied-upon portions of the reference, we are constrained to agree with Appellant to the extent that the rejection fails to show *prima facie* anticipation of the subject matter of the claim. We thus do not sustain the rejection of claim 1 under § 102(e) as being anticipated by Holub.

Moreover, Holub goes on to describe use of the virtual proof (VP) data structure in the embodiment of Figure 3A. User color preferences may be inputted at each node, which are needed by each node in calibrating its rendering device. *See* Holub col. 13, 1. 58 *et seq.* Even if we assume that the color preferences may be considered a “viewing condition” for an image, we find no description of displaying an image “subject to satisfaction” of the viewing condition.

The rejection of dependent claim 2 (Answer 4) suggests that calibration data may be regarded as viewing conditions (consistent with Appellant’s disclosure), but the Final Rejection and Answer fail to point out where Holub might disclose displaying an image subject to satisfaction of calibration data.

Independent claims 11, 19, 21, 27, 32, 38, 45, and 54 also contain limitations that link image display to satisfaction of viewing conditions. Because neither the § 102(e) nor the § 103(a) rejection show disclosure or suggestion for the relevant feature, we do not sustain the rejection of these independent claims, nor of their depending claims.

Appeal 2006-3279
Application 10/039,668
Technology Center 2600

Independent claim 43 links restricting the viewing of an image with received viewing conditions that define the acceptable amount of time that a display device has been turned on. Because the § 103(a) rejection over Holub and McLaughlin does not show disclosure or suggestion for the subject matter of claim 43, we do not sustain its rejection.

Independent claims 41 and 44, however, do not require that image display be subject to satisfaction of viewing conditions. The claims, in fact, make no mention of an image.

The Examiner's responsive arguments in the Answer suggest that the claims are so broad as to read on the initial turn-on time for a computer display, before the display is capable of being calibrated. We agree that claims 41 and 44 are drafted such that they do not distinguish over, for example, the required warm-up time for a cathode ray tube display before any image can be displayed and calibration may be performed. *Cf. In re Zletz*, 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").

Claims 41 and 44 recite restricting a calibration procedure when the display device has not been turned on for "an acceptable period of time." Contrary to Appellant's apparent interpretation, the claims do not require that any time be "measured," but require "determining" an amount of time that a display device has been turned on. The response of a computer and display to initial turn-on, and preparation of the display, *determine* the amount of time that the display has been turned on before calibration is

Appeal 2006-3279
Application 10/039,668
Technology Center 2600

practicable -- i.e., unrestricted -- even if there is no component for "measuring" the amount of time that the device has been turned on. The claims are sufficiently broad to encompass subject matter in the prior art, and are thus not patentable to Appellant. We sustain the rejection of claims 41 and 44, and of claim 42 not separately argued.

We also sustain the rejection of claims 51, 52, 69, and 70. Appellant argues that Holub does not teach displaying an image with a conspicuous marking if a viewing condition has not been satisfied. Base claim 51, however, recites displaying the image on a display device with conspicuous marking "indicating" that the image is not verified when the viewing conditions have not been satisfied at the viewing station. What a marking on a display device may "indicate" to a human viewer as claimed carries no weight in the analysis of patentability over the prior art. There is no new and unobvious functional relationship between the printed matter and the substrate -- i.e., between the conspicuous marking and the display device. The "indication" represents nothing about the display device; if there is any functional relationship at all between the information and structure in the claim, the relationship is with the viewing station, rather than the display device. The information displayed on a display device as claimed represents a mere arrangement of data -- i.e., nonfunctional descriptive material as discussed in *Manual of Patent Examining Procedure* (MPEP) § 2106.01 (8th ed., Rev. 5, Aug. 2006).

Finally, we also sustain the rejection of claims 53, 71, and 72. Appellant submits that the rejection of base claim 53 is in error because the method described in Holub does not restrict the ability to display the images

Appeal 2006-3279
Application 10/039,668
Technology Center 2600

on a display device at a viewing station if the viewing conditions are not satisfied at the viewing station as required by claim 53. However, we find no such requirement in claim 53. The claim requires a folder of images and an associated meta data file, adding a “wherein” clause that by its terms appears to represent a mere intended use for the images and data (e.g., what a viewing station may do with the data), which does not modify the original, actual content of the data as it resides on the computer readable medium. Appellant has not shown error in the Examiner’s finding that Holub (col. 25, ll. 36-45) shows all that instant claim 53 requires.

CONCLUSION

In summary, we have sustained the § 102(e) rejection of claims 51 and 52. We have sustained the § 103(a) rejection of claims 41, 42, 44, 53, and 69-72. We have not sustained the § 102(e) rejection of claims 1, 2, 7, 8, 19, 55-57, 59, and 60. Nor have we sustained the § 103(a) rejection of claims 3-6, 9-18, 20-40, 43, 45-50, 54, 58, 61-68, 73, and 74. The Examiner’s decision is thus affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Appeal 2006-3279
Application 10/039,668
Technology Center 2600

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